

LR 4001 Cash Collateral and Financing Orders.

- (a) **Motions.** Except as provided herein and elsewhere in these Rules, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed pursuant to Bankruptcy Rules 2002, 4001 and 9014 (“Financing Motions”).
- (b) **Provisions to be Highlighted.** All Financing Motions must (1) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below; (2) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement; and (3) provide the justification for the inclusion of such provision:
 - (1) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the pre-petition secured creditors (i.e., clauses that secure pre-petition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its pre-petition security agreement or applicable law).
 - (2) Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured creditor’s pre-petition lien or debt or the waiver of claims against the secured creditor without first giving parties-in-interest at least 75 days from the entry of the order and the creditors’ committee, if formed, at least 60 days from the date of its formation to investigate such matters.
 - (3) Provisions that seek to waive, without notice, whatever rights the state may have under 11 U.S.C. § 506(c).
 - (4) Provisions that grant immediately to the pre-petition secured creditor liens on the debtor’s claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549.
 - (5) Provisions that deem pre-petition secured debt to be post-petition debt or that use post-petition loans from a pre-petition secured creditor to pay part or all of that secured creditor’s pre-petition debt, other than as provided in 11 U.S.C. § 552(b).
 - (6) Provisions that provide for a substantially smaller or no professional fee carve-out for the professionals retained by a creditor’s committee as compared to the professional fee carve-out for the professionals retained by the debtor.

- (7) Provisions that prime any secured lien, without the consent of that lienor.
 - (8) Super-priority positions unless a significant carve-out is proposed.
 - (9) A secured creditor obtaining a higher administrative expense priority than Chapter 11 expenses of administration or Chapter 7 expenses of administration in the event of a conversion from Chapter 11.
 - (10) Automatic perfection of security interests in “replacement lien collateral” without filing or re-filing UCC statements.
- (c) **Summary of Terms.** All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under 11 U.S.C. §§ 363 and 364).
- (d) **Interim Relief.** When Financing Motions are filed with the Court on or shortly after the date of the entry of the order for relief, the Court may grant interim relief pending review by the interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. Interim financing orders that include any of the provisions previously identified in subsection (b)(1) through (b)(10) of this Rule may not be approved.
- (e) **Final Orders.** A final order shall be entered only after notice and a hearing pursuant to Bankruptcy Rule 4001 and LR 9014. Ordinarily, the final hearing shall be held at least ten (10) days following the organizational meeting of the creditors’ committee contemplated by 11 U.S.C. § 1102.

~~**LR 4001.1 — Lifting of the Automatic Stay.** All motions for relief from the Stay shall be served on the trustee administering the case.¹~~

LR 4001.1 Pre Confirmation Adequate Protection Payments

All adequate protection payments required by 11 U.S.C. §1326(a)(1) shall be paid as follows:

- (a) The debtor shall pay directly to the lessor all payments scheduled in a lease of personal property for that portion of the obligation that becomes due after the order for relief. Absent a timely objection to confirmation of the proposed plan, the debtor is presumed to have made these payments as required under 11 U.S.C. §1326(a). Since the Chapter 13 Plan shall provide that payments to lessors will be paid directly, there shall be no reduction in the Chapter 13 Plan payment for these direct payments.
- (b) The Chapter 13 Plan shall provide that §1326(a)(1) pre-confirmation adequate protection payments to a creditor holding an allowed claim secured by personal property to the extent that the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief is entered shall be paid through the Chapter 13 Trustee, unless the Court orders otherwise.
- (1) The debtor shall list the creditor name, address, account number and a sum certain to be paid for each secured creditor receiving a §1326(a)(1) preconfirmation adequate protection payment in the Chapter 13 Plan and Plan Summary for Cases Filed On or After October 17, 2005.
- (2) Unless the plan provides in clear and conspicuous language in the Chapter 13 Plan and Plan Summary for Cases Filed On or After October 17, 2005, that the creditor is not entitled to adequate protection payments because it is not a purchase money secured creditor in personal property, it is presumed that any creditor listed in the Chapter 13 Plan and Plan Summary for Cases Filed On or After October 17, 2005, shall be entitled to adequate protection.
- (3) The Chapter 13 Trustee shall not remit any adequate protection payment to any secured claimant who is not listed in the Chapter 13 Plan and Plan Summary for Cases Filed On or After October 17, 2005, absent other Order of the Court.
- (4) All adequate protection payments paid through the Chapter 13 Trustee shall be subject to the trustee's statutory percentage fee, as set by the designee of the United States Attorney General for confirmed plans and the Chapter 13 Trustee shall collect such percentage fee at the time of the distribution of the adequate protection payment to the claimant as a §503 administrative expense.
- (5) No adequate protection payments shall be paid until a Proof of Claim is filed.

- (6) All adequate protection payments through the Chapter 13 Trustee shall be made in the ordinary course of the trustee's business from funds in the case as they become available for distribution to claimants.
- (7) All adequate protection payments through the Chapter 13 Trustee shall be made in the equal monthly amount provided for the claimant in the Chapter 13 Plan unless the plan provides otherwise in clear and conspicuous language.
- (8) Pursuant to 11 U.S.C. §1326(a)(3), claimants may file objections to the adequate protection treatment provided by the plan. The Chapter 13 Trustee shall continue to make adequate protection payments to the movant in the monthly amount provided in the plan until the Court orders otherwise.
- (9) Upon the dismissal or conversion to another Chapter of a case prior to the confirmation of a Chapter 13 Plan, the Chapter 13 Trustee shall make the pre-confirmation adequate protection payments due under the plan or Court Order, or a portion thereof, from any funds available for that purpose received on or before the date of the entry of the Order of Dismissal or Conversion to creditors that have filed Proofs of Claim prior to the date of the dismissal or conversion.
- (10) The principal amount of the adequate protection recipient's claim shall be reduced by the amount of the adequate protection payments remitted to the claimant unless the Court orders otherwise.²

1. **4001.1** : Trustees receive these motions electronically when they are filed. Conventional service is no longer necessary.
2. **4001.1** : This rule became desirable by the passage of the amendments to the Bankruptcy Code in the Bankruptcy Abuse, Prevention and Consumer Protection Act of 2005. The provisions in 11 U.S.C. §1326(a)(1) provide unless otherwise provided that the debtor would make adequate protection payments directly. The prospect of the debtor making adequate protection payments and the trustee having to credit these payments without any means of verifying that they have been made will result in unnecessary hearings and accounting disputes that can be avoided by the implementation of this rule providing for the adequate protection payments by the trustee on the secured claims, both pre and post confirmation. The unification of the treatment on payment of the secured claims will result in more efficient administration.